



STATE OF WASHINGTON

# PUBLIC DISCLOSURE COMMISSION

711 Capitol Way Rm 206, PO Box 40908 \* Olympia, Washington 98504-0908 \* (360) 753-1111 \* Fax (360) 753-1112  
Toll Free 1-877-601-2828 \* E-mail: [pdc@pdc.wa.gov](mailto:pdc@pdc.wa.gov) \* Website: [www.pdc.wa.gov](http://www.pdc.wa.gov)

## BEFORE THE PUBLIC DISCLOSURE COMMISSION OF THE STATE OF WASHINGTON

IN RE COMPLIANCE	)	PDC Case No. 05-067
WITH RCW 42.17	)	Report of Investigation
	)	
Washington State Labor Council,	)	
Its Executive Board and Political	)	
Director	)	
Respondents.	)	
	)	

### I. COMPLAINT

- 1.1 On September 1, 2004, the Office of the Attorney General received a "45-day letter" from Jami Lund on behalf of the Evergreen Freedom Foundation. **(See Attachment 1)** The letter/complaintr alleged that the Washington State Labor Council (WSLC), its executive board and its political director violated provisions of chapter 42.17 RCW by:
  1. Failing to report Independent Expenditures (RCW 42.17.100 and 42.17.550)
  2. Exceeding contribution limits (RCW 42.17.640)
  3. Using public funds to affect elections (RCW 42.17.128)
  4. Failing to report as a political committee, when one of its primary purposes is to affect elections (RCW 42.17.040 through 42.17.080)
  5. Creating a "second, illegally hidden" PAC and exceeding contribution limits through this PAC (RCW 42.17.640 and 42.17.660)
  6. Failing to report earmarked contributions (RCW 42.17.670 and 42.17.730)
  7. Using non-member fees to affect elections (RCW 42.17.760).
- 1.2 The complaint alleges these activities took place in 1999, 2000, 2002 and 2004.
- 1.3 On September 1, 2004, the Office of the Attorney General delivered a copy of the letter/complaint to the PDC for investigation.

*"The public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private."*

RCW 42.17.010 (10)



## II. SCOPE

- 2.1 The following documents were reviewed:
1. The complaint letter from Jami Lund, including all exhibits, dated September 1, 2004
  2. Supplementary Evidence and exhibits from Jami Lund dated September 16, 2004
  3. Correspondence and attachments received from Respondent's counsel on September 22, 2004, September 29, 2004 and October 11, 2004
  4. PDC Interpretation 95-04
  5. Federal Election Commission regulation 11 CFR 100.134
  6. Court opinions and decision in *State of Washington, ex rel Evergreen Freedom Foundation et al., vs. Washington Education Assoc., et al. Thurston County Superior Court #97-2-01419-8*.
  7. Court of Appeals opinion in *State of Washington, ex rel. Evergreen Freedom Foundation v. Washington Education Association , No. 25272-4-II*
  8. The WSLC's constitution, in part
- 2.2 A meeting was held with Jami Lund on September 14, 2004 to further discuss the allegations.
- 2.3 The WSLC website was reviewed.
- 2.4 Diane McDaniel, WSLC's political director, was interviewed under oath.

## III. LAW AND ADMINISTRATIVE CODE

- 3.1 **RCW 42.17.020(24)** states, "'Independent Expenditure' means an expenditure that has each of the following elements:
- (a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office...;
  - (b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

- (c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person...has a value of \*\*\*five hundred dollars or more<sup>1</sup>...”
- 3.2 **RCW 42.17.100** requires the makers of independent expenditures to file periodic reports. Pursuant to (1), independent expenditure does not include “an internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the **members of a labor organization or other membership organization...**” (Emphasis added)
- 3.3 **RCW 42.17.020(14)(b)(v)** states: “An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization.”
- 3.4 **RCW 42.17.550** states: “A person or entity...making an independent expenditure by mailing one thousand or more identical or nearly identical cumulative pieces of political advertising in a single calendar year shall, within two working days after the date of the mailing file a statement disclosing the number of pieces in the mailing and an example of the mailed political advertising with the election officer of the county or residence for the candidate supported or opposed by the independent campaign...”
- 3.5 **RCW 42.17.640** imposes contribution limits on donors to and candidates for state legislative and executive offices.
- 3.6 **RCW 42.17.660** states: “For purposes of this chapter:  
(1) A contribution by a political committee with funds that have all been contributed by one person who exercises exclusive control over the distribution of the funds of the political committee is a contribution by the controlling person.  
(2) Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation or a local unit, branch, or affiliate of a trade association, labor union, or collective bargaining association. All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining organization, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the same person or entity.”
- 3.7 **WAC 390-16-309** states, in part: (1) “Two or more entities are treated as a single person and share one contribution limit under RCW 42.17.640 if one of the entities is...(e) A national or international federation of labor unions, or a state federation of labor unions, and the other is a local body of such federation...(e) Any entity referenced in (a) through

---

<sup>1</sup> The value has since increased to \$675.

(f) above and a political committee established, financed, maintained or controlled by that entity.

(2) For purposes of RCW 42.17.640, two entities shall not be treated as a single entity solely because one of the entities is a dues paying member of the other entity.

(3) In addition to paragraph (1) above, two or more entities shall be treated as one entity and share a contribution limit...if one of the entities is established, financed, maintained or controlled by the other, as evidenced by any one of the following factors:...(b) whether one entity has authority or the ability to direct or participate, other than through a votes as a member, in the governance of another entity through provisions of constitution, bylaws, contract or other formal or informal procedure or has authority or the ability to hire, appoint, demote or otherwise control, other than through a vote as a member, the officers or other decision making employees or members of another entity; or (c) whether (i) one entity has a common or overlapping membership with another...and (ii) the entity has a significant role in the formation of the other entity and (iii) the entities have similar patters of contributions or contributors...(d) whether one entity provides, causes or arranges, funds, services or goods in a significant amount or on an ongoing basis...for less than full consideration..."

- 3.8 **RCW 42.17.040** states: "Every political committee, within two weeks after its organization or, within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign...shall file a statement of organization with the commission..."
- 3.9 **RCW 42.17.060 – 42.17.090** specify the information required to be filed by a political committee and the specific dates the filings are due.
- 3.10 **RCW 42.17.670** states: "All contributions made by a person or entity, either directly or indirectly, to a candidate, to a state official against who recall charges have been filed, or to a political committee, are considered to be contributions from that person or entity to the candidate, state official, or political committee, as are contribution that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, state official or political committee. For the purposes of this section, "earmarked" means a designation, instruction, or encumbrance, whether direct or indirect, expressed or implied, or oral or written, that is intended to result in or does result in all or any part of a contribution being made to a certain candidate or state official if a conduit or intermediary exercises any direction or control over the choice of the recipient candidate or state official, the contribution is considered to be by both the original contributor and the conduit or intermediary."
- 3.11 **RCW 42.17.730** states: "(1) a person, other than an individual, may not be an intermediary or an agent for a contribution. (2) An individual may not make a contribution on behalf of anther person or entity, or while acting as the intermediary or agent of another person or entity, without disclosing to the recipient of the contribution both his or her full name, street address, occupation, name of employer, if any, or place

of business if self-employed, and the same information for each contribution for whom the individual serves as intermediary or agent.”

- 3.12 **RCW 42.17.760** states: “A labor organization may not use agency shop fees paid by an individual who is not a member of the organization to make contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual.”

#### IV. FACTS

##### **Background**

- 4.1 The Washington State Labor Council (WSLC) considers itself the largest labor organization in Washington State. There are more than 550 local unions and trade councils who are members of the WSLC, and these organizations represent more than 430,000 individuals in the State of Washington. The WSLC also considers itself a service organization. **(Exhibit 1)**
- 4.2 The AFL-CIO is the “parent organization” of the WSLC and to each of the 15 central labor bodies. The state federation, or the WSLC, is chartered by the national AFL-CIO. In addition, the AFL-CIO holds the charter for the central labor councils. The central labor councils are labor organizations structured around cities and counties in Washington. **(Exhibit 2)**
- 4.3 WSLC receives its revenue from a fixed per capita assessment imposed on each union. The AFL-CIO receives its funding separate from that of the WSLC. No per capita funds are moved or transferred between the two organizations. **(Exhibit 19)**
- 4.4 For purposes of contribution limits under RCW 42.17.640, the WSLC shares a limit with the AFL-CIO as well as the 15 central labor councils in the State. Those central labor bodies are as follows:
- Clark, Skamania and West Klickitat Central Labor Council
  - Cowlitz-Wahkiakum Central Labor Council
  - King County Labor Council
  - Kitsap County Labor Council
  - Lewiston-Clarkston Central Labor Council
  - North Central Washington Labor Council
  - Northwest Washington Central Labor Council
  - Olympic Labor Council
  - Pierce County Labor Council
  - Snohomish County Labor Council
  - Southeast Washington Central Labor Council
  - Spokane Regional Labor Council
  - Thurston-Lewis-Mason Counties Labor Council

- Twin Harbors Labor Council
- Yakima and South Central Counties Labor Council (**Exhibit 3**)

4.5 The goals of the WSLC, as stated in its constitution, are as follows:

- “Establish better relations among local unions in the State of Washington;
- Encourage harmonious action in matters affecting the welfare of our labor movement;
- Promote and distribute labor literature and aid and encourage a more complete labor press;
- Promote and agitate for the union label, shop card, and services;
- Better prepare ourselves to combat the enemies of organized labor;
- Assist local unions in organization and contract negotiations, whenever asked; and to have information and statistics available for all affiliated bodies to aid them in their problems;
- Bring into affiliation with the Washington State Labor Council all who are eligible, to the end that the Council shall become a powerful force to speak and act in defense and promotion of the whole body of laboring people of our state;
- Give recognition to the principle that both craft and industrial unions are appropriate, equal and necessary as methods of union organization.” (**Exhibit 4**)

4.6 The WSLC provides services to unions and their members. Those services include:

- Education---education and training sessions are held on safety and apprenticeship issues; provide information on diversity and sensitivity, ergonomics, sexual harassment and the Americans with Disabilities Act.
- Legislative Action---Lobby on key issues such as economics, welfare and social services, unemployment insurance, minimum wage, child labor and farm worker protections
- Political Action—Candidate recruitment, assessment and endorsement input, direct mail, assist unions in the development of their own membership action programs, voter registration and shop steward training. Produce campaign literature for distribution.
- Communications---Insure that WSLC events and positions are well publicized.
- Research---To further the legislative agenda, provide a general overview of the economy and workplace issues. Assist affiliates in need of information related to contract negotiations.
- Affiliate and Direct Worker Assistance
  - Community and Technical Colleges—created by a grant from the State Board of Community and Technical Colleges. Increase participation of worker representatives on all college general and program advisory committees.
  - Dislocated Worker Assistance---Inform dislocated workers about available employment and training services.
  - Project Help---Cooperative effort between WSLC, the business community and the Department of Labor and Industries. Facilitate effective

communication and dispute resolution between workers and employers regarding workers compensation claims.

- Substance Abuse Prevention---Provide information, substance abuse policy instruction, training and technical assistance to union members
- Welfare-to-Work Assistance---Help recovering alcoholics and drug addicts make the transition from welfare to work. **(Exhibit 5)**

4.7 In addition, the WSLC has several committees:

- Community Services—Examine ways the unions serve their communities and looks for opportunities to promote participation in volunteer activities.
- Economic Development and Transportation—Explore, in conjunction with state agencies and others, ways to best maintain a viable infrastructure that promotes a strong economy based on family-wage jobs.
- Education Training and Apprenticeship--- Public and vocational education and statewide apprenticeship programs.
- Initiative Strategy—Develop at the state level various worker friendly initiatives, oppose initiatives that are harmful to unions and members, and make recommendations regarding such initiatives to the WSLC.
- Political Action---Recruit labor activists for political/legislative activities, monitor local media for political news, notify WSLC of potential candidates for local and/or state office. This committee does not make recommendations on endorsements.
- WISHA Monitoring and Industrial Insurance---Monitor the enforcement and implementation of WISHA. Members sometimes testify on proposed job safety and health legislation, and participate in seminars and workshops on job safety and health issues.
- Women's---Maintains an interest in issues of special concern to working women. **(Exhibit 6)**

#### **Alleged Violation 1: Failure to Report Independent Expenditures/WSLC Ineligible for Internal Political Communications Exemption from Reporting**

4.8 The complaint alleges that the WSLC is not a labor organization, and therefore cannot claim the exemption of “internal political communications” when supporting or opposing candidates or ballot issues. Its political activity should be reported as independent expenditures.

- 4.8.1 RCW 42.17.100 states that “independent expenditure” does **not** include: “an internal political communication primarily limited to ...the members of a labor organization or **other membership organization.**” (emphasis added)
- 4.8.2 The WSLC is an organization which has dues paying members. Whether it is a labor organization or another membership organization is irrelevant in determining whether its communications were distributed primarily to members.

- 4.9 The complaint further alleges that the WSLC has started a “massive communications” campaign for 2004. It has sponsored political advertising in an attempt to affect the election. The complaint alleges that this campaign is reportable as independent expenditures because the ads were:
- a. sent to individuals who are union members, but not members of WSLC (the unions themselves are members of WSLC);
  - b. sent and/or given to friends and relatives of union members;
  - c. sent to individuals who no longer belong to a union; and
  - d. sent to retired union members.
- 4.10 The complainant argues that WSLC’s involvement in political campaigns cannot be seen as “internal political communications” because the communications are not limited to its members, and therefore must be reported as independent expenditures, pursuant to RCW 42.17.100.
- 4.10.1 The WSLC has, over the last five years, produced political literature that advocates for candidates and/or ballot issues. The WSLC does not maintain that the literature was produced without the encouragement of or coordination from the candidates, barring the expenditure from being classified as “independent.”<sup>2</sup> The Respondent states “Whether such communication occurred with respect to a particular candidate has not been a matter of concern for the WSLC, as the activity was not reportable, regardless of whether the WSLC and the candidate were aware of each other’s activities or plans.”  
**(Exhibit 7 page 2, Exhibit 8)**
- 4.10.2 The literature produced by the WSLC is distributed to the rank-and-file union members, whose unions are members of the WSLC. The literature is mailed to the homes of the individual union member, or it is distributed in person, through the WSLC’s Labor Neighbor program.
- 4.10.3 The Labor Neighbor program is one in which union volunteers visit the homes of fellow union members, discuss election issues, and distribute campaign materials. The volunteers are recruited through the WSLC website as well as through their individual unions. **(Exhibit 9)**
- 4.11 The complaint alleges that the WSLC “appear to market to anyone who has ever been in a union at some point affiliated with the WSLC”, specifically those individuals who no longer hold union jobs. According to Diane McDaniel, the member unions send the WSLC a current membership roster twice a year. Persons no longer holding union jobs are purged from the list. The process takes approximately two months to complete.  
**(Exhibit 10 page 14)**

---

<sup>2</sup> If the expenditures are deemed to be “internal political communication,” coordination with the candidate immaterial because, by definition, internal political communications do not qualify as either contributions or independent expenditures.

- 4.12 The complaint alleges that WSLC has “trained volunteers to go door-to-door in attempts to affect the outcome of the election.” The complaint states that the training sessions cannot be classified as “internal political communications” since those trained are not members of WSLC. Therefore those training expenses must be reported as independent expenditures.
- 4.12.1 The WSLC conducts generic election training for union member volunteers, none of whom are declared candidates at the time of training. The unions that send representatives pay for the training. **(Exhibit 10 page 23)**
- 4.13 The complaint also alleges that the WSLC engaged in “phone-banking” in attempts to influence an election. Documents provided as evidence were news clippings discussing a campaign plan of the AFL-CIO. The documents state that the plan was to “Communicate with union households in every way possible way (sic), including worksite conversations, home visits, union meetings, **phone calls**, mail and Internet communications...” (emphasis added) No evidence was provided or obtained that the calls were made to other than union households.
- 4.14 In 1995, the Public Disclosure Commission adopted PDC Interpretation 95-04, Internal Political Communications of Membership Organizations. This interpretation states, in part: “...if a membership organization and its members satisfy the criteria regarding “membership associations” and “members” established by Federal Election Commission (FEC) in 11 CFR 100.8(b)(4), the Public Disclosure Commission will consider the organization and its members as qualifying for the exemption in RCW 42.17.020(14)(b)(v), unless the communication was not sent primarily to members. However, these FEC criteria are not the only indicators of legitimate membership organizations or valid members, a determination that would be made by the Commission on a case-by-case basis as necessary.” **(Exhibit 11)**
- 4.15 RCW 42.17.020(14)(b)(v) specifies what is not a contribution. At the time Interpretation 95-04 was adopted, efforts were concentrated on what activities were or were not contributions for purposes of limits. The language in RCW 42.17.020(14)(b)(v) is identical to RCW 42.17.100 which exempts “internal political communications” from the definition of independent expenditure.
- 4.16 Section 11 CFR 100.134 (recodified from Section 100.8) sets out the criteria the Federal Election Commission considers when determining if someone is a member of an organization. Section (3)(h) states: “Members of local unions. Notwithstanding the requirements of paragraph (f) of this section, members of a local union are considered to be members of any ...federation with which the local, national, or international union is affiliated.” **(Exhibit 12)** That provision was also part of 11 CFR 100.8 at the time Interpretation 95-04 was adopted by the Commission.
- 4.17 The complainant also states that WSLC communicated with retirees who are no longer members of any union. The evidence provided as part of the complaint is: 1. Seattle

Times article dated August 11, 2004 entitled: "Unions court retirees to vote for Kerry" and 2. Philadelphia Inquirer article dated March 18, 2004 entitled: "AFL-CIO leaders exhort members to 'Dump Bush.'" No evidence was provided or obtained that WSLC targeted retired union members for assistance.

**Alleged Violation 2: WSLC Exceeded Shared Campaign Contribution Limits**

- 4.18 The complaint alleges that the WSLC shares contribution limits with all of its member unions and exceeded those limits when the WSLC and some of its member unions contributed to the same candidates.
- 4.19 The WSLC is affiliated, for contribution limit purposes, with the AFL-CIO and its central labor councils identified in Section 4.2 of this report. Hence, these entities are treated as a single entity and share a single contribution limit. **(Exhibit 10 pages 9 & 10)**
- 4.20 According to WAC 390-16-309(1)(b), each member shares a limit with the superior portions of that union organization. Pursuant to WAC 390-16-309, the member unions do not share contribution limits with the WSLC, AFL-CIO or the central labor bodies simply because they are dues paying members. The mechanism for a union to share a contribution limit with the WSLC is found in the factor test of WAC 390-16-309(3). No evidence was provided that one of the factors has been satisfied.

**Alleged Violation 3: WSLC Used Public Funds to Affect Elections**

- 4.21 The complaint states that the WSLC received grant monies that it may have used for election-affecting purposes. The complainant speculated that the WSLC may have co-mingled grant funds with its general funds. However, no evidence was provided to support this allegation. Regardless, staff inquired into this allegation for inclusion in this report.
- 4.21.1 The WSLC receives grants from public agencies. Bernice Vance, the Accounting Manager for the WSLC, confirmed that the grant funds are not co-mingled with general fund money. A separate bank account is opened for each grant received in order to properly account for the usage of those funds. **(Exhibit 13)**
- 4.21.2 Diane McDaniel stated it was her belief that while grants are obtained to assist a specific program, rarely if ever does the grant cover the entire cost of the program. **(Exhibit 10 page 23)**

**Alleged Violation 4: WSLC States That Affecting Elections is a Primary Purpose, Yet Fails to Register and Report as a Political Committee; the AFL-CIO Mandated a Special Assessment Which Was Then Used for Political Purposes**

- 4.22 The complaint alleged that the AFL-CIO raised member dues to "mobilize union household members in the 2004 presidential election." No evidence was provided or obtained that the WSLC increased member dues for this purpose. According to counsel

for the WSLC, it does not receive any of the per capita assessment or special assessments imposed by the AFL-CIO or its member unions. **(Exhibit 7)**

4.23 The complaint also alleges that the WSLC failed to register and report as a political committee, even temporarily. It states that the WSLC engages in significant election-affecting activities such as those activities discussed under Alleged Violation 1 as well as making large political contributions each year.

4.23.1 Evidence provided to support this claim is a page from the WSLC's website that lists services it provides to union members. One of the services listed is "political action" referred to as the COPE program (Committee on Political Education.) The complaint states that expenditures are "significant and must be calculated in determining the percentage of the WSLC's activities that are dedicated toward election-affecting purposes."

4.23.2 In *State of Washington, ex rel. Evergreen Freedom Foundation et al., vs. Washington Education Assoc., et al.* Thurston County Superior Court #97-2-01419-8, Judge Thomas McPhee said that using the expenditure of funds to determine whether an entity is a political committee is not enough. Judge McPhee stated: "It is a factor to be considered along with all other factors but should not determine by itself an organization's responsibility to register." He said that the court considered the goals of the entity in question, and found that its purpose was to "enhance the economic and professional security of its members." He went on to state that "participation in the political process to obtain economic security" was core to the entity's mission.

4.23.3 The Evergreen Freedom Foundation appealed that decision. In *State of Washington, ex rel. Evergreen Freedom Foundation v. Washington Education Association, Court of Appeals No. 25272-4-II*, that Court said that any analysis to determine "primary purpose" **should not be applied as a formula**. The court indicated that when trying to determine if one of an organization's primary purposes was to support or oppose candidates or ballot issues, the court would evaluate: (1) the content of the stated goals and mission; (2) whether the organization's actions further its stated goals and mission; (3) whether the stated goals and mission of the organization would be substantially achieved by a favorable outcome in an upcoming election; and (4) whether the organization uses means other than electoral political activity to achieve its stated goals and mission. **(Exhibit 14 page 6)**

4.23.4 The court then stated: "...by examining the totality of the circumstances, a fact finder may look at all of the organization's actions, including those in addition to its stated goals. If the activities of an organization reveal that a majority of its efforts are put toward electoral political activity, the fact finder may disregard the organization's stated goals to the contrary."

- 4.23.5 As noted in Section 4.4 of this report, COPE is one of six major programs engaged in by the WSLC. It is headed by Diane McDaniel. It does not encompass a majority of the WSLC's activities.
- 4.23.6 The WSLC has approximately 25 employees. Of those, two work on the COPE program a majority of the time, while one assists on a part time basis.
- 4.23.7 Ms. McDaniel's role is to maintain a current membership list of all AFL-CIO members in Washington, assist member unions with voter registration programs and materials, develop candidate questionnaires for the purpose of candidate recruitment and endorsements, assist member unions with election law and campaign finance related questions, provide member training on how to run effective campaigns, coordinate candidate contributions with central labor councils to insure contribution limits are adhered to, and oversee PDC reporting. **(Exhibit 15)** Ms. McDaniel estimates that 40% of her time during a calendar year is devoted to work that supports or opposes candidates or ballot issues. **(Exhibit 17)**
- 4.23.8 According to the WSLC's 2002 Convention report, they devote a significant amount of time and effort to all of its programs, most of which are not related to its political activities. **(Exhibit 16)**
- 4.23.9 The WSLC's political activities, broken down by calendar year, are as follows:<sup>3</sup> **(Exhibit 17, 22)**

Year	Total Hours <sup>4</sup>	Election Related Hours	Percentage
2000	55,183	7,207	14.16%
2002	58,876	1,411	19.55%
2003	50,980	4,953	9.72%
2004	37,544	5,189	14.52%

<sup>3</sup> In a case before the Commission prior to the *State of Washington, ex rel. Evergreen Freedom Foundation v. Washington Education Association*, Court of Appeals No. 25272-4-II, it was determined that an organization that spent 1%, 7.98% and 12.3% in supporting or opposing candidates or ballot issues in consecutive years was not considered a political committee, even though "the increasing amounts make it a closer question as to the primary purpose."

<sup>4</sup> Hours are based on all employees.

- 4.23.10 The fiscal year percentage of WSLC's expenditures spent to support or oppose candidates or ballot issues are as follows: **(Exhibit 17, 22)**

Fiscal Year (Apr 1 – March 31)	Percentage of Expenditures Spent to Support or Oppose
2001	13.91%
2003	13.77%
2005	16.00%

- 4.23.11 In a letter dated October 11, 2004, James Oswald, Counsel for the Respondent, states that the goals of the WSLC are not substantially achieved in any single election. "The importance of elections is that they alter the environment in which the WSLC attempts to achieve its stated goals, and thus make it more or less difficult to achieve those goals." He continues by stating: "Regardless of the outcome of elections, the WSLC would continue to pursue its goals and missions. This is because WSLC is not a political organization. It is a labor organization that participated in the political process as one of many ways that it advances its stated goals and missions." **(Exhibit 18)**

**Alleged Violation 5: Exceeding Contribution Limits by Creating a Second, Illegally Hidden PAC**

- 4.24 The complaint alleges that the WSLC and its political committee created Supporting Intelligent Candidates Political Committee (SIC-PAC) in order to provide contributions to candidates in which the WSLC had already contributed the maximum allowable by law. The complaint alleges that SIC-PAC is affiliated with the WSLC and therefore share contribution limits.

- 4.24.1 The allegation is based on the fact that some employees of the WSLC are also officers of SIC-PAC. The complaint states: "Since the treasurer and principal officers of the SIC-PAC are all employees of the WSLC, the WSLC has a controlling interest in the affairs of the political committee.
- 4.24.2 Employees of the WSLC are members of the Office and Professional Employees International Union Local 8. Some of the employees became less than enamored with the candidates the union was supporting. They decided to form their own political committee. SIC-PAC was created and began filing as a political committee in 2000. **(Exhibit 13)**

- 4.24.3 Diane McDaniel stated that SIC-PAC makes contributions to candidates without input from the WSLC or any of its officers. In addition, Bernice Vance, a member of SIC-PAC, stated that officers of the WSLC seldom attend SIC-PAC meetings where decisions are made and learn of those decisions after the fact.
  - 4.24.4 SIC-PAC does not have overlapping membership with the WSLC, nor did the WSLC or its officers have a significant role in the formation of SIC-PAC. The WSLC does not provide goods or services to SIC-PAC for less than full consideration.
  - 4.24.5 No evidence was found that SIC-PAC was established, financed, maintained or controlled by the WSLC.
- 4.25 The complaint also alleges that SIC-PAC exceeded the abbreviated reporting option in 2000. This allegation is addressed separately in PDC Case No. 05-027.

**Alleged Violation 6: Failing to Report Earmarked Contributions**

- 4.26 The complaint alleges that the WSLC earmarked funds provided to SIC-PAC for candidates who had already received the maximum contributions. In addition, the complaint alleges that the WSLC gave funds to the Washington State Democratic Central Committee (WSDCC) earmarked for specific candidates.
- 4.26.1 The WSLC makes contributions to the WSDCC, both to the exempt funds account and the non-exempt funds account.
  - 4.26.2 No evidence was provided that the WSLC earmarked contributions through either SIC-PAC or the WSDCC. Regardless, staff inquired into this allegation for inclusion in this report.
  - 4.26.3 The WSLC did not make contributions to SIC-PAC. Diane McDaniel and Paul Berendt, Chair of the Washington State Democrats, both confirmed that the contributions received from the WSLC were not earmarked for specific candidates. **(Exhibit 10 page 18, Exhibit 20)**

**Alleged Violation 7: Using Non-Member Fees to Affect Elections<sup>5</sup>**

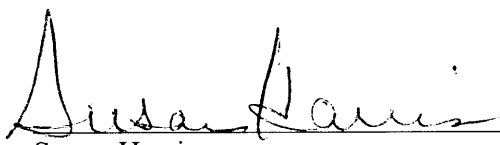
- 4.27 Initially, the complainant alleged that the WSLC is not a labor organization, and therefore not eligible for the reporting exemption of "internal political communications" afforded labor organizations. For purposes of RCW 42.17.760, the complainant alleges that the WSLC is a labor organization that uses agency shop fees to make contributions or expenditures to influence an election.

---

<sup>5</sup> The constitutionality of RCW 42.17.760 is being challenged in *State ex rel. Public Disclosure Commission v. Washington Education Association*, State Supreme Court No. 74268-5. A decision is pending.

- 4.28 The complaint alleges that many members of the WSLC have mandatory agency shop fees for those who decline to join the union and those shop fees may be included in the per capita assessment sent to the WSLC. The complaint states that "unless WSLC takes deliberate steps to assure that each affiliates 'per capita' council assessment does not include any funds collected as agency fees, the general funds may not be used as political contributions."
- 4.28.1 The complaint speculates that the WSLC receives non-member funds that it then uses "to affect elections", but provides no evidence. Regardless of the lack of evidence, staff briefly inquired into this allegation for inclusion in this report.
- 4.28.2 Article XI, Section 2 of the WSLC's constitution states: "local unions affiliated with the Washington State Labor Council shall pay per capita tax on their full membership..."
- 4.28.3 Bernice Vance, Accounting Manager for the WSLC, stated that she "has no basis to believe that any unions pay per capita based on persons who are not members." **(Exhibit 13)**
- 4.28.4 Alan Link, Secretary Treasurer of the WSLC, stated that he was unaware of any union that pays per capita tax on an individual who is not a member. **(Exhibit 19)**
- 4.28.5 PDC staff contacted two unions, the International Aerospace Machinists Union 751 and International Brotherhood of Electrical Workers Local 77, and was informed that the unions calculated its per capita on membership only, and did not include non-members or retired members into the amount. **(Exhibit 21)**

RESPECTFULLY SUBMITTED THIS 15<sup>th</sup> day of October, 2004.

  
Susan Harris  
Assistant Director

**List of Exhibits**

1. Page from the WSLC website describing the organization
2. Page from AFL-CIO website describing its structure
3. 2004 WSLC Directory of Organizations (partial)
4. WSLC Constitution (partial)
5. Page from the WSLC website describing its programs
6. Page from the WSLC website listing standing committees
7. Letter dated September 29, 2004 from James Oswald
8. Sample of political literature distributed by WSLC in 2004
9. Page from the WSLC website describing the "Labor Neighbor" program
10. Transcript of interview of Diane McDaniel, September 29, 2004
11. PDC Interpretation 95-04
12. Federal Election Commission regulation 11 CFR 100.134
13. Declaration of Bernice Vance dated September 21, 2004.
14. Court of Appeals decision in *State of Washington, ex rel. Evergreen Freedom Foundation v. Washington Education Association*, No. 25272-4-II
15. Diane McDaniel job description
16. The WSLC 2002 Convention Report
17. Declaration of Diane McDaniel dated October 12, 2004
18. Letter dated October 11, 2004 from James Oswald
19. Declaration of Alan Link
20. E-mail between Susan Harris and Paul Berendt
21. Memorandum from Kurt Young to Susan Harris re: dues paid to WSLC by members
22. Declaration of Bernice Vance dated October 12, 2004